

FILED

AUG 17 2006

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CARL RELF,

Plaintiff,

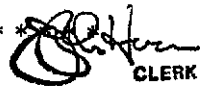
vs.

ROD OSWALD, Assistant Attorney General;
PAT WEST, Agent for Criminal Investigations
in his official and unofficial capacity;
DOUGLAS WEBER, Warden, South Dakota
State Penitentiary, in his official and
unofficial capacity,

Defendants.

CIV. 06-4081

OPINION AND ORDER


CLERK

The Magistrate Judge issued a Report and Recommendation on June 22, 2006, recommending that plaintiff's complaint against the defendants *in their official capacities* be dismissed, with prejudice, for failure to state a claim upon which relief may be granted. Plaintiff filed no objections to the Report and Recommendation. That same date the Magistrate Judge entered an Order for Service, ordering the complaint served on the defendants *in their individual capacities*.

On June 23, 2006, the summons were delivered to the United States Marshal for service on defendants as directed by plaintiff. There is no record in the court file of service having been accomplished on defendants.

Accordingly, it is hereby

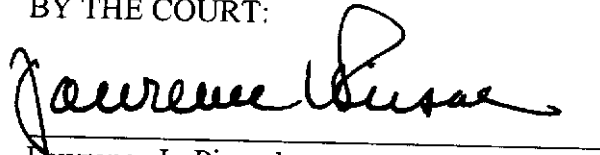
ORDERED that:

1. The Report and Recommendation is ADOPTED.

2. Plaintiff's claims against defendants *in their official capacities* are hereby dismissed, with prejudice, for failure to state a claim.
3. The only Defendants that remain in this action are Defendant Rod Oswald, in his individual capacity, Defendant Pat West, in his individual capacity, and Defendant Douglas Weber, in his individual capacity.
4. The United States Marshal shall promptly serve the summons on Defendants as requested by the plaintiff and as now ordered by this Court.

Dated this 17th day of August, 2006.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

By: Sharon Luro, Deputy

(SEAL)